
(2015) 04 OHC CK 0056

In the Orissa High Court

Case No : Writ Petition (C) Nos. 6191, 6192, 6193, 6194, 6195, 6196, 6197 and 6199 of 2010

Prakash Chandra Bhoi and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Constitution of India, 1950 — Article 243G

Citation : (2015) 04 OHC CK 0056

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Advocate : P.K. Mohanty, SC, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.N. Prasad, J.

1. Since the issue involved in all these cases are common and as such the same are being disposed of by way of common judgment.
2. The petitioners have approached this Court for issuance of direction to implement the order passed by the Collector, Puri as contained in Annexure-3 by which opposite party No. 2 has come to a finding that the petitioners deserve to be inducted for engagement of Sikshya Sahayaks.
3. Brief facts of the case that the petitioner is a candidate belong to SC category and had participated in the selection process for engagement of Sikshya Sahayak.
4. Grievance of the petitioner that the petitioner since belong to SC category, being eligible in all respect, ought to have been selected since advertisement was published against backlong vacancies to be filled up from the category belonging to SC/ST.
5. The petitioner being selected on the ground that the vacancies which ought to have been filled up from SC category had been filled up by exchanging the quota

year marked for SC/ST category against which the candidates belonging to general category have been appointed.

6. The petitioner relied upon the provision as contained in the Orissa Gazette vide its resolution dated 31.5.2006 which has been issued in the name of the Governor in exercise of power conferred under Article 243G of the Constitution of India as inserted by the Constitution (73rd Amendment) Act, 1992 conferring powers to hand over the elementary education to the control of Zilla Parishad and other Panchayati Raj institutions. In the said notification engagement of Sikshya Sahayak will have to be made by Zilla Parishad.

7. Under the provisions as contained in para-4.2 there is clear cut stipulation that against SC and ST quota, non SC/ST candidates shall not be engaged. The said Orissa Gazette dated 31.5.2009 have been communicated to all the departments vide letter No. 11124 dated 19.3.2007 wherein at para-4 it has been stipulated that exchange of reservation between SC and ST will not be permissible. The petitioner since been not engaged had approached this Court by way of W.P.(C) No. 2960 of 2009 by which the petitioner was directed to file representation before the Collector for taking decision in accordance with law. Accordingly, Collector has passed order on 22.10.2009 being SSA Misc.Case No. 32 of 2009. The Collector has reached to definite conclusion that the petitioner deserves to be inducted for engagement as Sikshya Sahayak with a direction to the petitioner to file representation before the D.P.C., SSA, Puri and the order of the Collector has not been challenged by the petitioner before the Director and the said order attained its finality.

Grievance of the petitioner that the petitioner has not been engaged in spite of clear cut finding given regarding induction of the petitioner in service as Sikshya Sahayak.

8. Petitioner has also relied upon the communication issued by the Collector-cum-Chief Executive Officer, Zilla Parishad, Puri dated 13.11.2009 wherein the Collector-cum-Chief Executive Officer, Zilla Parishad, Puri even after passing order that the petitioner deserves to be inducted as Sikshya Sahayak, clarification has been sought for from the Government wherein it has been admitted on their part that the vacancies earmarked for the ST category have not been appointed even after non-availability of ST candidates and as such vacancies have been filled up from the select list of 2006 and as such direction has been sought for from the Government to clarify the position to meet out the demand of SC candidates.

9. On the other hand, learned counsel for the Department of School and Mass Education has filed counter-affidavit wherein much emphasis has been given upon the communication as contained in letter No. 15420 dated 31.7.2008 issued by the Additional Secretary to Government, by making a provision for consideration of engagement of the candidates as Sikshya Sahayak in order to meet against the reserved ST backlog vacancies in the district of Puri.

The whole contention of the learned counsel for the opposite parties is that the Government has acted in pursuance of the decision dated 31.7.2008 taken by the Department of School and Mass Education which has been annexed as Annexure-B/2 to the writ petition.

10. Heard learned counsel for the parties and perused the documents available on record.

11. The sole question which arise for consideration is as to whether vacancies year marked for SC/ST (backlog) can be filled up from the general category from the panel in existence.

12. To decide the issue it is worth to see the Orissa Extraordinary Gazette published on 31.5.2006 conferring power upon the Zilla Parishad for engagement of new Sikhya Sahayak wherein a provision has been made at 4.2 that against SC and ST quota, non SC/ST candidates shall not be engaged. For better appreciation, relevant paragraph is reproduced below:

"Selection shall be made only on merit i.e. on the basis of percentage of marks secured in Matriculation/+2 and C.T. examination for C.T. candidates and B.A./B.Sc./B.Com examination and B.Ed. examination for B.Ed. candidates. In case two or more candidates secure the same marks, the candidate older by age and if ages are same, the candidates passing matriculation examination earlier will be placed above the other in the select list. In case C.T./B.Ed. trained candidates are not available under SC and ST categories; untrained Matriculate/+2 candidates of that category can only be engaged. But against SC and ST quota, non SC/ST candidates shall not be engaged."

13. In the letter dated 15.3.2007 the resolution has been communicated to all Departments of Govt., Heads of Department, Collectors vide letter No. 11124 wherein it at paragraph-4 it has been communicated that exchange of reservation between SC and ST will not be permissible. For better appreciation, para-4 of the letter dated 15.3.2007 is reproduced below:

"Hon"ble Supreme Court have further observed that specific slots for OBC, SC and ST as well as General candidates have to be maintained in the roster. For want of candidates in a particular category, the post may remain unfilled. Nonetheless that slot has to be filled up only by the specified category.

The implication of this judgment is that in case of non-availability of a particular class of candidate, the same cannot be de-reserved to be filled up by other categories of candidates. In other words, exchange of reservation between SC and ST will not be permissible."

14. Case of the petitioner is that the petitioner being a member of SC category, ought to have been considered in case of non-availability of ST category candidate and the post is not to be filled up from amongst the general category candidates in view of the specific bar of exchange of quota as per the resolution dated 31.5.2006.

15. On this ground, petitioner had approached this Court by way of invoking extraordinary jurisdiction by this Court and this Court directed the petitioner to make representation before the Collector to adjudicate the issue and accordingly the Collector has passed the order coming to definite finding that the petitioner deserves to be inducted in service as Sikhya Sahayak.

16. Contention of the learned counsel for the petitioner is that due to non-availability of posts since the entire posts have been filled up from the panel of the year 2006 in the light of the letter dated 31.7.2008 (Annexure-B/2 annexed to the counter-affidavit filed by opposite parties issued by the Additional Secretary to Government, Department of School and Mass Education without going into the merit of the eligibility/non-eligibility of the petitioner, the paramount question in this case is that the Department of School and Mass Education has issued a resolution dated 31.5.2006 in the name of Excellency of Governor of Orissa that non SC/ST candidates shall not be engaged against SC and ST quota as would be evident from para-4 of the resolution dated 31.5.2006, the said resolution has been communicated to all the departments by communication No. 11124 dated 15.3.2007, then in that circumstance under what authority of law the Additional Secretary to Government, Department of School and Mass Education has issued letter to the District Project Co-ordinator, SSA, Puri vide letter dated 31.7.2008 which is the contrary decision taken by the State Government. The decision was taken to fill up the vacancies in the district from out of the panel/select list of 2006 against required vacancies of ST backlog vacancies.

It is the settled principle of law that whenever any decision has been taken by the State Government in the name of His Excellency of Governor of Orissa, the same is to be followed in its letter and spirit.

17. Government of Orissa has taken a decision vide resolution dated 31.5.2006 published in the Orissa Gazette in the name of His Excellency Governor of Orissa with regard to quota, but in spite of having fulfilled the conditions of the resolution the Additional Secretary to Government, Department of School and Mass Education directed to fill up the vacancies on account of non-availability of ST candidate.

18. For determining the claim of the petitioner and after perusing the communication dated 13.11.2009 issued by the Collector-cum-Chief Executive Officer, Zilla Parishad, Puri clarification has been sought for from the Government to clarify the position and further course of action to be taken due to non-availability of posts for its fulfilment by making exchange quota so that the SC candidates may be engaged.

19. As has been informed by learned counsel for the petitioner that the opposite party has not taken any decision in pursuance to the letter dated 13.11.2009 and the matter is pending.

20. In the light of such submission, the Secretary to Government, Department of

School and Mass Education, Government of Odisha is hereby directed to decide the following issues:

(i) As to whether when the Government has taken decision by issuing resolution dated 31.5.2006 prohibiting that against SC and ST quota, non SC/ST candidates shall not be engaged. Then under what authority of law the Additional Secretary to Government has issued communication dated 31.7.2008 to the District Project Coordinator, SSA, Puri whereby and whereunder decision of the Government has been relaxed by the Additional Secretary to Government?

(ii) Also to decide jurisdiction of Additional Secretary to Government as to whether the Additional Secretary to Government, Department of School and Mass Education has got any jurisdiction to modify/alter the decision taken by the Government by making relaxation and permitting exchange of quota which is contrary to the decision of the Government as per the resolution dated 31.5.2006.

In this regard, decision shall be taken by the Secretary, Department of School and Mass Education within a reasonable period, preferably within a period of eight weeks from the date of presentation of certified copy of this order.

21. Continuance of the candidates on the basis of the panel of year 2006 will depend upon the outcome of the decision which shall be taken by the Secretary, Department of School and Mass Education.

22. Engagement of the petitioner as Sikshya Sahayak will also depend upon decision which shall be taken by the Secretary, Department of School and Mass Education as indicated herein above.

With the above observations and directions, all the writ petitions are disposed of.